NOTIFICATION. 602

No. L.D. 1103—Legis. 3-51-26, dated Bangalore, 20th September 1951.

Ordered that the Report of the Select Committee on the State Financial Corporation Bill, 1951 Central Bill No. 102 of 1950) published in the *Gazette of India*, Part II, Section 2, dated the 25th August 1951, be republished in the *Mysore Gazette*, for general infomation.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,

Legal Remembrancer and
Secretary to Government,
Law Department.

(AS AMENDED BY THE SELECT COMMITTEE) 603

(Words sidelined or underlined indicate the amendments suggested by the Committee : asterisks indicate the omissions).

BILL No. 102 OF 1950.

A Bill to provide for the establishment of State Financial Corporations.

BE it enacted by Parliament as follows :—

CHAPTER I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) This Act may be called the State Financial Corporations Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in any State on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(*a*) "Board" means the Board of directors of the Financial Corporation ;

(*b*) "Financial Corporation" means the Financial Corporation established for the State under section 3 ;

(*c*) "industrial concern" means any concern engaged in the manufacture, * * preservation or processing of goods or in mining or in the generation or distribution of electricity or any other form of power ;

(*d*) "prescribed" means prescribed by rules or regulations made under this Act ;

(*e*) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (II of 1934) ;

(*f*) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934) ;

(*g*) "underwriting" means contract, with or without conditions, to subscribe for stocks, shares, bonds or debentures of an industrial concern with a view to the resale of the whole or any part thereof.

CHAPTER II.

INCORPORATION OF STATE FINANCIAL CORPORATIONS, THEIR CAPITAL AND MANAGEMENT.

3. *Establishment of State Financial Corporations.*—(1) The State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification.

(2) The Financial Corporation shall be a body corporate by the name notified under sub-section (1), having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire and to hold property and shall by the said name sue and be sued.

4. *Share capital and shareholders.*—(1) The authorised capital of the Financial Corporation shall be such sum as may be fixed by the State Government in this behalf, but it shall in no case be less than fifty lakhs of rupees or exceed five crores of rupees.

(2) The authorised capital shall be divided into such number of fully paid-up shares as the State Government may determine and shall be issued to the parties mentioned in sub-section (3) at such times and in such manner as that Government may determine and each such share shall have the same face value.

(3) The State Government shall, with the approval of the Central Government, determine the number of shares which may, respectively, be distributed among—

(*a*) the State Government,

(*b*) the Reserve Bank,

(*c*) scheduled banks, insurance companies, investment trusts, co-operative banks or other financial institutions, and

(*d*) parties other than those referred to in clauses (*a*), (*b*) and (*c*):

* * *

Provided that the number of shares * which may be allocated to the parties referred to in clause (*d*) shall in no case exceed twenty-five per cent of the total number of shares.

* * * * *

(4) Subject to the other provisions contained in this section, the allocation of shares among the parties referred to in clauses (*c*) and (*d*) of sub-section (3) and the allotment of such shares shall be made by the Financial Corporation in such manner as may be prescribed.

(5) If any shares allocated to any of the parties referred to in clauses (*c*) and (*d*) of sub-section (3) remain unsubscribed, they shall be subscribed for by the State Government, but the State Government may at any time thereafter dispose of the shares so subscribed for to any party who was eligible to subscribe for it in the first instance.

5. *Restrictions on transfer of shares.*—(1) The shares of the Financial Corporation shall not be transferable except to the State Government, the Reserve Bank or any other financial institution recognised in this behalf by the State Government:

Provided that the shares subscribed for by members of the public shall be freely transferable.

(2) Nothing contained in this section shall affect the provisions of sub-section (5) of section 4.

6. *Shares to be guaranteed by the Central Government and to be trust or approved securities.*—(1) The shares of the Financial Corporation shall be guaranteed by the State Government as to the repayment of principal and

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the payment of annual dividend at such minimum rate as the State Government may, with the approval of the Central Government, fix by notification published in the Official Gazette at the time of issuing the shares.

(2) Notwithstanding anything contained in the Acts hereinafter mentioned in this sub-section, the shares of the Corporation shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882 (II of 1882) and also to be approved securities for the purposes of the Insurance Act, 1938 (IV of 1938) and the Banking Companies Act, 1949 (X of 1949).

7. *Additional capital of the Financial Corporation.*—(1) The Financial Corporation may, in consultation with the Reserve Bank, issue and sell bonds and debentures carrying interest for the purpose of increasing its working capital:

Provided that the total amount of bonds and debentures issued and outstanding and of the contingent liabilities of the Financial Corporation in the form of guarantees given by it or underwriting agreements entered into by it shall not at any time exceed five times the amount of the paid-up share capital and the reserve fund of the Financial Corporation.

(2) Bonds and debentures of the Financial Corporation shall be guaranteed by the State Government as to the repayment of the principal and the payment of interest at such rate as the State Government may, on the recommendation of the Board and with the approval of the Central Government, fix at the time the bonds and debentures are issued.

8. *Deposits with the Financial Corporation.*—The Financial Corporation may accept deposits from the public repayable after the expiry of a period which shall not be less than five years from the date of the making of the deposit, and on such other terms as it thinks fit:

Provided that the total amount of such deposits shall not at any time exceed the paid-up capital of the Financial Corporation.

9. *Management of Financial Corporations.*—The general superintendence,* direction and management of the affairs and business of the Financial Corporation shall vest in a Board of directors which, with the assistance of an Executive Committee and a managing director may exercise all the powers and discharge all the functions which may be exercised or discharged by the Financial Corporation.

10. *Board of directors.*—The Board of directors shall consist of the following, namely:—

(*a*) three directors nominated by the State Government;

(*b*) one director nominated by the Central Board of the Reserve Bank;

(*c*) one director nominated by the Board of Directors of the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (XV of 1948);

(*d*) three directors elected in the prescribed manner from among themselves by the parties referred to in clause (*c*) of sub-section (5) of section 4, one of whom shall be elected to represent scheduled banks, another to represent Co-operative banks and the third to represent the remaining financial institutions;

(*e*) one director elected in the prescribed manner from among themselves by the parties referred to in clause (*d*) of sub-section (3) of section 4 who are shareholders of the Financial Corporation ;

(*f*) one managing director appointed by the State Government, in consultation with the Board except in the case of the first appointment :

Provided that on the first constitution of the Board the directors referred to in clauses (*d*) and (*e*) shall be nominated by the State Government and the directors so nominated shall, for the purposes of this Act, be deemed to be elected directors :

Provided further that all directors of the Board first constituted other than the managing director shall retire at the end of the first year.

11. *Term of office and retirement of directors.*—(1) A nominated director shall hold office during the pleasure of the authority nominating him.

(2) An elected director other than a director deemed to be elected under the first proviso to section 10 shall hold office for four years :

Provided that two out of the four directors so elected shall retire at the end of two years after the first election and the other two at the end of four years after such election, the directors so to retire being determined by lot.

(3) Notwithstanding anything contained in sub-section (2), an elected director shall continue in office until his successor is elected and shall also be eligible for re-election for not more than two full consecutive terms after the rotation of elected directors has begun.

12. *Disqualifications for being a director.*—No person shall be a director who—

(*a*) except in the case of a managing director, is a salaried official of the Financial Corporation ; or

(*b*) is or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors ; or

(*c*) is found to be a lunatic or becomes of unsound mind ; or

(*d*) is or has been convicted of any offence involving moral turpitude.

13. *Removal of director from office.*—The State Government may remove from office * * any * director who—

(*a*) is, or has become, subject to any of the disqualifications mentioned in section 12 ; or

* * *

(*b*) without excuse sufficient in the opinion of the State Government to exonerate it, is absent without leave of the Board from more than three consecutive meetings of the Board.

14. *Resignation of office by director and filling up of casual vacancies.*—(1) The managing director or any other director may resign his office by giving notice thereof in writing to the State Government, and, on such resignation being accepted, shall be deemed to have vacated his office.

(2) A casual vacancy in the office of an elected director shall be filled by election and a director so elected shall hold office for the unexpired portion of the term of his predecessor.

(3) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

15. *Chairman of the Board.*—(1) The Chairman of the Board shall be one of the directors, not being the managing director, nominated by the State Government, after considering, except in the case of the nomination of the first Chairman, the recommendation of the Board :

Provided that the nomination of the Chairman for any period other than the first period shall be made only after the vacancies in the office of directors occurring by efflux of time in that period have been filled by nomination or election as the case may be.

(2) The Chairman shall hold office for two years or until his successor is nominated :

Provided that a Chairman shall so long as he remains a director be eligible for re-nomination as Chairman.

16. *Remuneration of directors.*—The directors other than the managing director and not being servants of the State Government shall be paid such fees for attending meetings of the Board and, if they are members thereof, of the Executive Committee, as may be prescribed.

17. *Managing director.*—The managing director shall—

(*a*) be a whole time officer of the Financial Corporation ;

(*b*) perform such duties as the Board may, by regulations, entrust or delegate to him ;

(*c*) hold office for four years and be eligible for reappointment ;

(*d*) receive such salary and allowances as the Board, with th previous approval of the State Government, may determine :

Provided that the first managing director shall hold office for such term and shall receive such salary and allowances as the State Government may fix.

18. *Executive Committee.*—(1) The Executive Committee shall consist of the managing director who shall be the Chairman of the Committee, and three other directors, chosen as follows :—

(*a*) two directors elected by the nominated directors, one from among the directors nominated by the State Government, and one from among the directors nominated by the Reserve Bank and the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (XV of 1948) ;

(*b*) one director elected by the elected directors.

(2) A director elected to be a member of the Executive Committee shall hold office as such for the rest of his term of office as director, * *

*

19. *Meetings of the Board and Committee.*—(1) The Board and the Executive Committee shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings as may be provided by regulations made under this Act.

(2) All questions at a meeting shall be decided by a majority of votes of the members present, and, in the case of equality of votes, the Chairman or in his absence, any other person presiding, shall have a second or casting vote.

(3) No director shall vote on any matter in which he is interested.

(4) If for any reason the Chairman is unable to be present at a meeting—

(*a*) of the Board, a director other than the managing director, authorised by the Chairman in writing in this behalf, shall preside at that meeting, or

(*b*) of the Executive Committee, a member authorised in writing by the managing director shall preside at that meeting.

20. *Powers of Executive Committee.*—(1) Subject to such general or special directions as the Board may from time to time give, the Executive Committee may deal with any matter within the competence of the Board.

(2) The minutes of every meeting of the Executive Committee shall be laid before the Board at the next following meeting of the Board.

21. *Advisory Committee.*—The Financial Corporation may appoint one or more advisory committee or committees for the purpose of assisting the Financial Corporation in the efficient discharge of its functions and, in particular, for the purpose of securing that those functions are exercised with due regard to the circumstances and conditions prevailing in, and the requirements of particular areas or industries.

22. *Offices and agencies.*—The Financial Corporation shall establish its head office at such place in the State as the State Government may specify and may, with the previous sanction of the State Government, establish offices or agencies in any other place in the State.

23. *Officers and other employees of the Corporation.*—The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them.

CHAPTER III.

Powers and Duties of the Board.

24. *General duty of the Board.*—The Board in discharging its functions under this Act shall act on business principles; due regard being had by it to the interests of industry, commerce and the general public.

25. *Business which Financial Corporations may transact.*—(1) The Financial Corporation may, subject to the provisions of this Act, carry on and transact any of the following kinds of business, namely :—

(*a*) the guaranteeing on such terms and conditions as may be agreed upon of loans raised by industrial concerns which are repayable within a period not exceeding twenty years and are floated in the public market;

(*b*) the underwriting of the issue of stocks, shares, bonds, or debentures by industrial corcerns;

(*c*) the receipt in consideration of the services mentioned in clauses (*a*) and (*b*) of such commission as may be agreed upon;

(*d*) the retention as part of its assets of any stocks, shares, bonds, or debentures which it may have to take up in fulfilment of its underwriting

liabilities : provided that it disposes of the stocks, shares, bonds or debentures so acquired as early as practicable and in any case within a period of seven years from the date of such acquisition ;

(*e*) the granting of loans or advances to, or the subscribing to debentures of, industrial concerns, repayable within a period not exceeding twenty years from the date on which they are granted subscribed to, as the case may be ; and

(*f*) generally, the doing of all such acts and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

(2) No accommodation shall be given under clauses (*a*) and (*e*) of sub-section (1), unless it is sufficiently secured by a pledge, mortgage, hypothecation or assignment of Government or other securities, stocks, shares or secured debentures, bullion, movable or immovable property or other tangible assets in the manner prescribed by regulations.

26. *Limit of accommodation.*—The Financial Corporation shall not enter into any arrangement under clauses (*a*) and (*e*) of sub-section (1) of section 25 with a single industrial concern for an amount equivalent in the aggregate to more than ten per cent of the paid-up share capital of the Corporation, but in no case exceeding ten lakhs of rupees.

27. *Power to impose conditions for accommodation.*—(1) In entering into any arrangement under section 25 with an industrial concern, the Financial Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Financial Corporation and securing that the accommodation granted by it is put to the best use by the industrial concern.

(2) Where one of the conditions imposed under sub-section (1) is that a director shall be appointed by the Financial Corporation on the board of directors of the industrial concern to protect the interests of the Financial Corporation, such condition shall be a valid condition notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in any other law for the time being in force or in any instrument relating to the industrial concern.

28. *Prohibited business.*—The Financial Corporation shall not—

(*a*) accept deposits, except as provided by this Act ;

(*b*) subscribe directly to the shares or stock of any company having a limited liability :

Provided that nothing in clause (*b*) shall affect the right of the Financial Corporation to acquire any shares, bonds or debentures of a company having limited liability in fulfilment of any underwriting agreement entered into by the Financial Corporation ;

(*c*) grant any loan or advance on the security of its own shares.

29. *Rights of Financial Corporation in case of default.*—(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management of the industrial concern, as well

as the right to sell and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers of sale and realisation under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the sale had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any property is sold or realised by the Financial Corporation under the provisions of this section, the money which is received by it from such sale or realisation shall, in the absence of any contract to the contrary, be held by the Financial Corporation in trust to be applied, first, in payment of all costs, charges and expenses properly incurred by it as incident to the said sale or realisation and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation takes over the management of an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the owner of the concern.

30. *Power to call for repayment before agreed period.*—Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—

(*a*) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance: or

(*b*) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or

(*c*) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(*d*) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(*e*) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or

(*f*) if for any reason it is necessary * * * to protect the interests of the Financial Corporation.

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31. *Special provisions for enforcement of claims by Financial Corporation.*—(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs namely :—

(*a*) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance ; or

(*b*) for transferring the management of the industrial concern to the Financial Corporation ; or

(*c*) for an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

32. *Procedure of district judge in respect of applications under section 31.*—(1) When the application is for the reliefs mentioned in clauses (*a*) and (*c*) of sub-section (1) of section 31, the district judge shall pass an *ad interim* order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(2) When the application is for the relief mentioned in clause (*b*) of sub-section (1) of section 31, the district judge shall grant an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under sub-section (1) or sub-section (2). the district judge may, if he thinks fit, examine the officer making th application.

(4) At the same time as he passes an order under sub-section (1), the district judge shall issue to the industrial concern a notice accompanied by c pies of the order, the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

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(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district judge shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908), in so far as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the district judge may—

(*a*) confirm the order of attachment and direct the sale of the attached property;

(*b*) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(*c*) release the property from attachment;

(*d*) confirm or dissolve the injunction; or

(*e*) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under clause (*c*), the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

Provided further, that unless the Financial Corporation intimates to the district judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908) for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree holder.

(9) Any party aggrieved by an order under sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial ncern have commenced before an application is made under sub-section (1) of section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

(11) The functions of a district judge under this section shall, in a presidency-town, be exercised by the principal judge of the City Civil Court, if any, having jurisdiction or by the High Court.

CHAPTER IV.

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INVESTMENT OF FUNDS, ACCOUNTS AND AUDIT.

33. *Funds of the Financial Corporation.*—(1) Every Financial Corporation shall have its own fund, and all receipts of the Financial Corporation shall be carried thereto and all payments by the Corporation shall be made therefrom.

(2) All moneys belonging to the fund shall be deposited in the Reserve Bank or with any agency of the Reserve Bank other than a Government treasury or in a scheduled bank in consultation with the Reserve Bank.

34. *Investment of funds.*—The Financial Corporation may invest its funds in the securities of the Central Government or of any State Government.

35. *Disposal of profits.*—(1) The Financial Corporation shall establish a reserve fund.

(2) After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by banking companies, the Financial Corporation may out of its net annual profits declare a dividend :

Provided that for so long as the reserve fund is less than the paid-up share capital of the Financial Corporation and until there has been repaid to the State Government such sum, if any, as that Government may have paid under guarantee given in pursuance of Section 6, or under any guarantee given in pursuance of sub-section (2) of Section 7, the rate of such dividend shall not exceed the rate guaranteed by the State Government under Section 6.

(3) Notwithstanding anything contained in this section, no dividend paid under this section shall under any circumstances exceed the rate of five per cent per annum and if, in respect of any financial year after the reserve fund becomes equal to the share capital of the Financial Corporation, there is a surplus in the net profits after declaring a dividend at the rate specified in this sub-section, such surplus shall be paid to the State Government.

36. *General meetings.*—(1) A general meeting (hereinafter referred to as the annual general meeting) shall be held annually at a place in the State within two months from the date on which the annual accounts of the Financial Corporation are closed, and a general meeting may be convened by the Board at any other time.

(2) The shareholders present at the annual general meeting shall be entitled to discuss the annual accounts, the report of the Board on the working of the Financial Corporation throughout the year and the auditor's report on the annual balance-sheet and accounts.

37. *Audit.*—(1) The affairs of the Financial Corporation shall be audited by not less than two auditors duly qualified to act as auditors of companies under sub-section (1) of Section 144 of the Indian Companies Act, 1913 (VII of 1913), one of whom shall be appointed by the State Government in consultation with the Comptroller and Auditor-General of India and the other elected in the prescribed manner by the parties mentioned in clauses (*c*) and (*b*) of sub-section (3) of Section 4, and such remuneration as

the State Government may fix shall be paid to the auditors by the Financial Corporation.

(2) Every auditor shall be supplied with a copy of the annual balance-sheet of the Financial Corporation, and it shall be his duty to examine it, together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Financial Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Financial Corporation and may in relation to such accounts examine any director or officer of the Financial Corporation.

(3) The auditors shall make a report to the shareholders upon the annual balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of affairs of the Financial Corporation, and in case* they had called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(4) The State Government may, in consultation with the Comptroller and Auditor-General of India, at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Financial Corporation for the protection of its shareholders and creditors or upon the sufficiency of their procedure in auditing the affairs of the Financial Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted, or direct that any other examination be made by the auditors, if in its opinion the public interest so requires.

(5) The Financial Corporation shall send a copy of every report of the auditors to the Comptroller and Auditor-General of India at least one month before it is placed before the share-holders.

(6) Notwithstanding anything contained in the preceding sub-sections, the Comptroller and Auditor-General of India may, either of his own motion or on a request received in this behalf from a State Government, undertake such audit and at such times as he may consider necessary :

Provided that where the State Government is required to make any payment on account of the guarantee given by it under Section 6 or sub-section (2) of Section 7, as the case may be, such audit shall be undertaken by the Comptroller and Auditor-General of India.

(7) Every audit report under sub-section (6) shall be forwarded to the State Government and the Government shall cause the same to be laid before the Legislature of the State.

38. *Returns.*—(1) The Financial Corporation shall furnish a statement, in the prescribed form, of its assets and liabilities as at the close of business on the last Friday of each month or, if that day is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), as at the close of business on the preceding working day to the State Government and to the Reserve Bank within ten days from the date to which the statement relates.

(2) The Financial Corporation shall furnish in the prescribed form to the State Government and to the Reserve Bank once every three months or, as frequently as the State Government or the Reserve Bank may require, a

statement showing the classification of its loans and investments and of all loans guaranteed by it and underwriting agreements entered into by it.

(3) The Financial Corporation shall furnish to the State Government and to the Reserve Bank within three months of the close of each financial year a statement in the prescribed form of its assets and liabilities as at the close of that year, together with a profit and loss account for the year, the auditors' report and a report of the working of the Financial Corporation during the year and copies of the said statement, account and reports shall be published in the Official Gazette and shall also be laid before the Legislature of the State.

CHAPTER V.

MISCELLANEOUS.

39. *Power to give instructions to Financial Corporation on questions of policy.*—(1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

(3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government, the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any court.

40. *Declaration of fidelity and secrecy.*—Every director, auditor, officer or other employee of the Financial Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

41. *Indemnity of directors.*—(1) Every director shall be indemnified by the Financial Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) A director shall not be responsible for any other director or for any officer or other employee of the Financial Corporation or for any loss or expenses resulting to the Financial Corporation by the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Financial Corporation or by the wrongful act of any person under obligation to the Financial Corporation or by anything done in good faith in the execution of the duties of his office or in relation thereto.

42. *Offences.*—(1) Whoever, in any bill of lading, warehouse receipt or other document given to the Financial Corporation, whereby security is given or is purported to be given to the Financial Corporation for any accommodation granted by it under this Act, wilfully makes any false statement or

knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

(2) whoever, without the consent in writing of the Financial Corporation, uses the name of the Financial Corporation in any prospectus or advertisement shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this Act otherwise than on a complaint in writing signed by an officer of the Financial Corporation authorised by the Board in this behalf.

43. *Provisions relating to Income-tax and Super-tax.*—For the purposes of the Indian Income-tax Act, 1922 (XI of 1922), the Financial Corporation shall be deemed to be a company within the meaning of that Act and shall be liable to Income-tax and Super-tax accordingly on its income, profits and gains :

Provided that any sum paid by the State Government under the guarantee given in pursuance of Section 6 or under any guarantee given in pursuance of sub-section (2) of Section 7 shall not be treated as the income, profits and gains of the Financial Corporation and any interest on debentures or bonds paid by the Financial Corporation out of such sum shall not be treated as expenditure incurred by it :

Provided further that in the case of any shareholder such portion of a dividend as has been paid out of any such sum advanced by the State Government shall be deemed to be its income from "interest on securities" declared to be Income-tax free within the meaning of Section 8 of that Act.

44. *Act XVIII of 1891 to apply to the books of the Financial Corporation.*—The Financial Corporation shall be deemed to be a bank for the purposes of the Bankers Books Evidence Act, 1891 (XVIII of 1891).

45. *Liquidation of Financial Corporation.*—No provision of law relating to the winding-up of companies or corporations shall apply to the Financial Corporation, and the Financial Corporation shall not be placed in liquidation, save by order of the State Government and in such manner as it may direct.

46. *Power to apply Act to certain financial institutions in existence at commencement of Act.*—(1) The Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to any institution in existence at the commencement of this Act which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established the State Government for the State within the meaning of this Act, and the provisions of this Act shall become applicable thereto according to the minor of the notification.

(2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification.

47. *Power of State Government to make rules.*—The State Government may make rules not inconsistent with the provisions of this Act to give effect

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to the provisions of this Act and in particular, such rules may provide for the limitation on the voting rights of a shareholder and the manner in which such voting rights may be exercised and where there is any inconsistency between the rules and the regulations made under this Act, the rules shall prevail.

48. *Power of Board to make regulations.*—(1) The Board may, after consultation with the Reserve Bank and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*) the holding and conduct of elections under this Act, including the final decision on doubts or disputes regarding the validity of elections;

(*b*) the manner in which, and the conditions subject to which, the first allotment of the shares of the Financial Corporation shall be made;

(*c*) the manner in which, and the conditions subject to which, the shares of the Financial Corporation may be held and transferred and generally all matters relating to the rights and duties of shareholders;

(*d*) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(*e*) the calling of meetings of the Board and of the Executive Committee, fees for attending meetings thereof and the conduct of business thereat;

(*f*) the manner and terms of issue and repayment of bonds and debentures by the Financial Corporation;

(*g*) the conditions which the Financial Corporation may impose in granting loans or advances;

(*h*) the manner of determining the sufficiency of the security taken under sub-section (2) of Section 25;

(*i*) the forms of returns and statements required under this Act;

(*j*) the duties and conduct of officers and servants and agents of the Financial Corporation;

(*k*) the establishment and maintenance of provident or other benefit funds for employees of the Financial Corporation;

(*l*) the taking over of the management of any industrial concern on a breach of its agreement with the Financial Corporation;

(*m*) the appointment of *ad hoc* committees for technical and oth advice for the purposes of this Act; and

(*n*) generally, the efficient conduct of the affairs of the Financial Corporation.

(3) All regulations made under this section shall be published in the Official Gazette and shall come into force on such publication.

THE SCHEDULE 618

(*See* section 40)

DECLARATION OF FIDELITY AND SECRECY

I, ..., do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as a director, officer, employee or auditor (as the case may be) of the Financial Corporation and which properly relate to any office or position in the said Financial Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Financial Corporation, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Financial Corporation and relating to the business of the Financial Corporation.

Signature.

Signed before me :

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The following Report of the Select Committee on the Bill to provide for the establishment of a Tariff Commission and to regulate its duties and functions, was presented to Parliament on the 10 August 1951 :—

We, the undersigned Members of the Select Committee to which the Bill to provide for the establishment of a Tariff Commission and to regulate its duties and functions was referred, have considered the Bill and have now the honour to submit this our report, with the Bill as amended by us annexed thereto.

Clause 3.—Although we agree with the recommendation of the Fiscal Commission that the Tariff Commission should ordinarily consist of five members, the majority of us are of the opinion that the position should remain flexible as proposed in the Bill so that the number of members may be increased if the volume of work demands it. We think, however, that the maximum should be increased from four to five.

By a majority we have also decided that the proviso to sub-clause (1) providing for the appointment of temporary additional members should remain.

As a matter of drafting we have recast this clause.

Clause 4.—Although we do not propose to make any changes in this use, we recommend that except where necessary officers of the Government in the administrative services should not be appointed as members of the Commission, and if any such appointments have to be made, they should be confined to the minimum.

Clause 5.—In our opinion a Member of Parliament or of a State Legislature should not be disqualified for appointment as a member of the Commission, but the law should provide for the vacation of his seat on his being appointed a member. We also feel that the proviso to sub-clause (1)(b)

should be omitted as, firstly, it is unnecessary, and secondly, it may have the effect of negativing what is sought to be achieved by sub-clause (1)(b). The clause has been redrafted accordingly.

Clause 6.—Although we do not feel called upon to make any changes in sub-clause (3), we recommend that in the case of temporary additional members of the Commission the consent of the Central Government to their holding private appointments after the termination of their office should be freely given. We also feel that as membership of the Commission is a high office there is no need to prescribe a penalty for securing compliance with the provisions of this sub clause.

Clause 7.—In our opinion the powers of removal contained, for example, in sub-clauses (a) and (b) require to be regulated so as to prevent the arbitrary exercise thereof, and we have, therefore, provided in clause 24 for rules to be made in this behalf. As an additional safeguard we have provided that every case of removal should be reported to Parliament. Incidentally we have added the words "or mentally" in sub-clause (a), and have made a few minor drafting changes.

Clause 8.—Although in our opinion no amendment is called for in this clause, we recommend that in making rules in this behalf the Central Government should provide that appointments above a certain limit, say Rs. 300 per mensem, should be made only on the recommendation of the Union Public Service Commission while appointments below that limit may be made by the Commission.

Clause 11.—In sub-clause (1)(a) we have substituted the words "or in any other suitable form" for the word "otherwise" to indicate clearly that protection may assume any form, whether fiscal or non-fiscal. In the nature of thing it is difficult to specify all forms of protection. We have also omitted the words "primary or secondary" as unnecessary. Moreover, in the absence of suitable definitions these words may cause some difficulty.

In sub-clause (1)(c) we have omitted the word "manufacture" as being irrelevant and the change in sub-clause (1)(d) is consequential upon the amendment to clause 13.

A new sub-clause (1)(e) has been added providing for the reference to the Tariff Commission of protected industries where the protection given requires to be further considered with a view to its modification or abolition.

Suitable provisions exist in the Indian Tariff Act, 1934, enabling the Central Government to take action in emergencies and a provision on the lines of sub clause (2) is hardly necessary. In our opinion this provision should be omitted.

Clause 13.—In our opinion the powers of the Commission to make enquiries *suo motu* should also extend to the matters specified in clause 11 (1) (b) and in the new clause 11 (1) (e).

Clause 14.—We have made express provision in the new sub-clause (1) (e) to ensure that due regard is given by the Tariff Commission to cottage and other small scale industries engaged in the same or allied field before granting protection to an industry. We have also amended sub-clause (2) indicating two more matters in respect of which conditions may be prescribed. A suggestion was made that a reference to conditions relating to labour

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should also find a place here, but as this is implicit in sub-clause (1) (a) we have not thought it necessary to include any such express provision.

Clause 16.—In our opinion a time limit should be fixed within which the Government should be compelled to take action on every report of the Tariff Commission. We have redrafted sub-clause (2) accordingly.

Clause 18.—We have redrafted this clause so as to provide for the appointment of assessors on the request of the Commission also.

Clause 20.—We have omitted sub-clause (3) as being unnecessary and too drastic for the purposes of this Bill.

Clause 22.—We think that the penalties prescribed in this clause should be enhanced to one thousand rupees and six months, respectively.

Clause 24.—We have included a specific reference to a few more items on which rules can be made.

Clause 26.—This is new and provides for the construction of references to the Tariff Board in other enactments.

2. The Bill was published in Part II—Section 2 of the *Gazette of India* dated the 24th March, 1951.

3. We think that the Bill has not been so altered as to require circulation under rule 77 (4) or the Rules of Procedure and Conduct of Business in Parliament, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR
B. R. AMBEDKAR
HAREKRUSHNA MAHTAB
D. P. KARMARKAR
M. L DWIVEDI
SHREE NARAYAN DAS
KHANDUBHAI K. DESAI
MUNISHWARDATT UPADHYAY
SOCHET SINGH
P. S. DESHMUKH
G. A. THIMMAPPA GOWDA
P. KUNHIRAMAN
V. S. SIVAPRAKASAM
*K. T. SHAH
*ARUN CHANDRA GUHA
THAKUR LALSINGH
RAJ BAHADUR
**THAKUR DAS BHARGAVA
*GOKULBHAI DAULATRAM BHATT
KAKA BHAGWANT ROY
O. V. ALAGESAN
C. D. PANDE

NEW DELHI;
The 10th August, 1951.

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*Subject to a Minute of Dissent.
**The Minute of Dissent was received after the Report was presented to Parliament. It has therefore not been included in this report.

MINUTES OF DISSENT 621

I

I have signed this report subject to the following note.

2. The Bill, as reported upon, still provides for a term of three years to every whole-time member of the Commission. Considering that the persons found competent and suitable for such posts would be, in all probability, past middle age; considering, further, that they would be allowed a second term, if re-appointed, for three years only, it would be most unfair, in my opinion, to leave any such person, at the end of six years of conscientious public service, to shift for himself.

3. It is true, provision has been made for permitting any such person, under suitable circumstances, after retirement, to take up any other employment, conformable to his aptitude or opportunity but, unless such permission is to become a mere formality, it would place the retiring Commissioner under a severe strain, under which, in the concluding months of his term of office, he may not be able to discharge his duties as efficiently and wholeheartedly as may be desired.

4. I have, further, an objection, on principle, for granting such permission, except under wholly exceptional and unexpected circumstances. The opportunity to take employment in a private concern, especially in one of the kind that has received State aid or protection of some sort during the term of such a person's office, is apt to be abused. I would, therefore, guard, as effectively as possible, against any such temptation to impropriety. No permission should, accordingly, be given to seek and accept employment under private business or enterprise, unless an extraordinary and unusual situation has arisen over which the person seeking such permission had no control. These posts should be made, like the judges, integral part of the national public service, with all its rights and obligations, even though persons appointed to these posts, may have been selected rather late in life.

5. An appropriate and effective solution would be to lengthen the term of office, and make it, in the first instance, for five years, and, under suitable circumstances, allow another term of not exceeding five years. By this time the person concerned would have, normally speaking, arrived at an age, where superannuation is the correct step. In no case should these be life appointments for any person; and no vested interests should be suffered to be created, or even to be suspected. Superannuation would be easier, and the public service rendered would not have been all to no purpose, so far as making provision for one's old age is concerned, if some kind of a proportionate pension is allowed in all such cases, as a matter of course and right. The analogy of the Judges' pensions may be quoted, in this connection to reinforce the argument.

6. Another matter on which some change in the report is necessary relates to the form, or the manner, in which protection, encouragement, or assistance to an industry in need of such help may be provided. Clause 11(a), as amended in the Select Committee, provides for "protection (whether by the grant of subsidies or the levy of protectives duties, or in any other suitable form)". But, while mentioning, specifically, only two of the important

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forms in which effective assistance, relief or protection may be afforded, in appropriate cases, a large category is left undefined. If it is found necessary and desirable specifically to mention two of the forms of State help to industry, I see no reason why other forms, equally orthodox and perhaps more effective, should not even be mentioned. The aim of State aid to indigenous industry—call it protection if you like—was wholly different before the achievement of national independence from what it is and should be to-day. The forms of protection must, consequently, also undergo a corresponding change. The omnibus wording, therefore, in this clause is likely to cause more confusion than real assistance, or effective protection. For many reasons of a political as well as economic nature, it is undesirable to leave the precise form, or combination of forms, in which such aid can be given to the discretion of the Tariff Commission, or even to that of the Executive Government. Forms of protection may involve grave questions not only of national but also of international policies. It is, therefore, necessary that the various forms be particularised in the basic legislation itself. At the proper time amendments will be moved to give effect to this view.

7. There are other minor issues on which, also, there appears room for amendment, which will be submitted at the proper moment.

NEW DELHI;
The 10*th August*, 1951. K. T. SHAH.

II

I am in several agreement with the Bill as amended by the Select Committee. But I have some apprehension about some of the provisions.

2. In section 8 the Tariff Commission has been authorised to appoint its own staff. From our experience in some other autonomous bodies I would very much like to it obligatory for the Commission to go through the Union Public Service Commission for all appointments carrying a salary over Rs. 300 per mensem, instead of leaving it to be regulated by rules. In the past the Government have not been very particular in these matters, so it is difficult for me to accept the assurance that the Government would put such a provision in the rules.

3. Section 11 authorises the Commission to give protection to an industry which has not yet started production. This system is already existing; and we cannot say that in all cases only *bona fide* use has been made of this system. So I wanted a particular time limit—say preferably not exceeding one year—to be fixed within which that industry must start production. But the Select Committee has only added a new sub-section (b) to section 14 by which the Commission will be competent to fix such a time limit. Instead of making it optional for the Commission, I would like to have a definte time fixed by the Act.

4. By section 7, a member of the Commission can be removed for physical inability. Her also I would like in all such cases, a Medical Board should be consulted. But the Select Committee has only put a new sub-section (b) to section 24 by which the Government by rules may provide for such a procedure.

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5. Lastly I would like the members of the Commission to be appointed for five years instead of three years. The responsibilities and the post-retirement disabilities of the members are such as to limit the scope of choice to a narrow circle. So a longer tenure of appointment would have been better.

NEW DELHI;
The 10*th August*, 1951. ARUN CHANDRA GUHA.

III

I am constrained to write this note of dissent.

CLAUSE 6—*Conditions of service of members of the Commission.*

2. *Term of office.*—In sub-clause 1, the term of office proposed is three years. This period seems to be short. It must be raised to five years to stabilise the working of the Tariff Commission. Five years period will go a great way in maintaining continuity of work and uniformity of action. We are now starting to set up a permanent body required to discharge manifold functions and duties. This body has in the first instance to do much spade work in organizing its office, etc., and therefore it is all the more necessary to extend the term to five years.

3. *Restriction on ceasing members.*—Sub-clause 3 of clause 6 runs as follows:—

> "(3) A member of the Commission ceasing to hold office as such shall not hold any appointment in any private industry or undertaking for a period of three years from so ceasing to hold office, save with the consent in writing of the Central Government."

This is a novel sort of future disability introduced. This will apply to permanent as well as to *ad hoc* members of the Commission under clause 3 but for *ad hoc* members, the report of the Select Committee, which has no legal status, recommends to the Central Government to be liberal in granting consent to hold appointments after ceasing to hold office. Whom are we restricting and for what? Let us examine these points. It is said that the members of Tariff Commission will be dealing with important matters concerning the industry and therefore a check proposed would keep them clean and impartial otherwise they are likely to be influenced by the future gain after relinquishing office.

4. First of all we must realise whom are we appointing? They will be 'men of ability and standing' enjoying and inspiring public confidence. They are required to submit detailed reports with their recommendations; the reports will mainly depend on thorough inquiries: these inquiries will be open to the public. And after all what is this Commission for? It has to tender advice to the Central Government. The Government might or might not accept the recommendations of this Commission and even if the Tariff Commission's recommendations are unreasonably accepted by the Government the Parliament is there finally to approve or disapprove the action of the Government.

5. We do not expect the members of the Tariff Commission, men of integrity and position, to act in a manner of favouritism and contrary to the confidence reposed in them. But let us assume for a moment the worst

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possible case. The member who is bought over or influenced does not himself accept an appointment to conform to the letter of the law but he indirectly in numerous ways receives the benefits of favour shown to an industry. How are we going to check that ? And what are we going to do for one who contrary to the restriction accepts an appointment ? Our report says : "we also feel that as membership of the Commission is a high office there is no need to prescribe a penalty for securing compliance with the provisions of this sub-clause." On the one hand, we put them on so high a level, on the other hand, we begin to doubt their integrity. This is curious and incongruous.

6. I wish to allude to sub-clause (1) of clause 5 wherein it is said : "No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has directly or indirectly any such financial or commercial interest in any industry or undertaking as is likely to affect him in the discharge of his duties as a member of the Commission."

7. What harm will be done if a ceasing member actively joins an undertaking in which he had, as a continuing member, some limited interest ?

8. One would naturally ask, which is the other Commission embodying in its structure such a 'salutory' provision ? Taxation on Income (Investigation Commission) Act does not have such a provision. Income Tax Investigation Commission has much more powers to do and undo a thing. And are we placing restrictions on Ministers and others who hold very important offices of profit and who command executive powers ? As far as I know such a restriction is non-existent in similar Acts of other countries. So on principle, I think that such a restriction should not be imposed on the members of the Tariff Commission which is an advisory body.

9. But if, for my inability to express and convince, my point of view is not acceptable, I make the following suggestions also :—

(a) period of three years to be reduced ;
(b) pension, gratuity or suitable allowance be given to the ceasing member till the time he is permitted to take an appointment ;
(c) sub-clause 3 may be so amended, so as to leave scope for a ceasing member to take an appointment in an industry not enquired into during his tenure of office.

CLAUSE 11—*Reference—obligatory or optional ?*

Clause 11 says : "The Central Government may refer to the Commission for inquiry and report any matter....."

10. I think that the Government should refer all applications asking for grant of protection. As it stands at present, the Government may or may not refer any matter.

11. When we are enacting a measure to set up an expert body to tender advice taking into consideration all matters governed by the principles and directions contained in clause 14, the Government should by way of routine refer all applications received. The present procedure of the Government before reference to the Tariff Board is as follows :

".....An industry seeking protection or assistance from Government has first to submit its application to the Ministry of Commerce. This application is placed before an Inter-Departmental Committee consisting of

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representatives of the Ministries of Commerce, Industry and Supply and Finance. Representatives of other Ministries if concerned with any particular industry, are also present at such meetings. If it is fouud that a *prima facie* case has been made out by the industry in question that it is a fit case to go before the Tariff Board, the Ministry of Commerce refers the case to the Board for investigation and report. This reference is made through a Resolution of Government... ...." (Para. 12, Review of Work of the Indian Tariff Board.....from 1945 to 1949).

12. As I am not yet in possession of relevant factual information asked for, I cannot definitely state how much time is taken in the process of reference. But it seems to me that much energy, time and money must be required on the part of the Government and the industry concerned. Is there a necessity for this preliminary examination of a case before reference? Departmental experts may make out a *prima facie* case which, when reported by the Tariff Board, may not deserve protection or assistance sought for (*vide* annexure B of the Review of Work of the Tariff Board); and it is difficult to know how many cases were not referred to the Tariff Board.

13. And therefore if, as a matter of course, applications are straightaway referred to the Tariff Commission, time, energy and money will be saved, duplicating of work would be avoided, and nothing would be lost.

14. It may be said that the Government should be the final authority to refer an application asking for protection, because it can alone take into consideration the Government policy. I do not think there is much substance in this; because the Tariff Commission, before recommending, has to bear in mind 'the public interest' [(e) of (2) of Clause 14.]

15. I have only touched the points, as this note is to be submitted in time.

GOKULBHAI DAULATRAM BHATT.

NEW DELHI;
The 10*th August*, 1951.

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